1949 File No. O Sales

Legal Department

A BRANCH

Subject:— Opinions Under the Bombay Sales Tax Act - 19

P.28
15

ile No. O. Sales Tax/49

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C O N T E N T S.

Legal Department File No. O.Sales Tax/49

Sr.No.	R.I./O.No.	Subject.	Pages.
		Bombay Sales Tax Act, 1946.	
1.	~~896~~ 19/1/49 ~~2902~~ 14/3/49	Whether State Transport pumps used for supplying petrol to the S.T.Vehicles are liable to pay sales tax; and whether the S.T. pumps supplying petrol to vehicles belonging to other Deptts. of Govt. are liable to pay the Sales tax.	1-4
2.	~~6795~~ 24/5/49	Whether the definition of "sale" in the Bom. Sales Tax Act, 1946 is open to objection.	5-10.
3.	Govt. of I. Ministry of Finance Letter No. 15(7)-P.x/49 dt. 5-7-49	Copy of the reference and c to the Federal Advocate General about the validity of the definition of "sale" in certain Provl. Sales Tax Acts.	11-14
4.	~~Memorandum~~ ~~re Sales Tax Act~~	~~Memorandum re Sales Tax Act~~	
4.	.-------.	Statement of case for the opinion of the Advocate General.	15-18
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JPE.7/8/56.
4 copies.

96

L.D.R.I.No.895
dt. 19/1/1949.

In his letter No.S.T.60(376), dated 19/1/49 the Provincial Motor Transport Controller states ~~that normally, the State Transport Controller state~~ that normally, the State Transport has one pump at Sirur and another at Poona and that when the Nationalisation Scheme extends to other areas, it will have many more pumps at various places. Normally no petrol is issued to the public ~~xxxxx~~ or even to the Government Departments. The petrol is not sold from the pumps to the public but is only used for government vehicles owned by the State Transport. On these facts, the question raised for R.L.A's consideration are:-

(1) Whether State Transport pumps used for supplying petrol to the State Transport vehicles are laible to pay sales tax; and

(2) Whether the State Transport pumps supplying petrol to vehicles belonging to other Departments of Government, are liable to pay the sales tax.

OFFICE OF THE R.L.A.

Question of exemption from Sales Tax in respect of petrol from the State Transport Service Pumps.

Seen and returned.

The view taken by the Home Department on both points is correct.

Id/- P.M.L.
12/3

Remembrancer of Legal Affairs.

U.H. to H.D.,No.2902 dated the 14th March 1949.

JPE.4/6/56.
4 copies.

Legal Department.

The Government of India state that the Provinces have adopted a definition of sale which is not the same as under the general law relating to sale of goods. In clause (a) of the new section 264-A(1) it is proposed to be provided that no law of a State shall impose or authorise the imposition of a tax on the sale of goods the sale does not take place within the State. The question for consideration is whether the definition of "sale" in the Bombay Sales Tax Act, 1946, is open to this objection.

2. Section 2(g) defines sale as meaning any transfer of property or goods for cash or deferred payment or other valuable consideration. There is nothing objectionable in this definition. It follows the provisions of section 4(1) of the Indian Sale of Goods Act, 1930, which provides that a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer property or goods to the buyers for price. Following the provision of the Sales Tax Act of other Provinces, two explanation are added to section 2(g) of the Bombay Sales Tax Act. The explanation 1 refers to the transfer of goods on hire--- purchase agreement or other instalment system of payment In the first place, it is made clear that such agreement mustbinvolve a transfer of goods. Therein it has been judicially laid down that many so-called hire purchase agreements are in reality trading contracts to purchase, the price to be paid by instalments, and in these cases the contract xhis contract of sale and not a contract of hiring (I.L.R. 49 BOM.172, 54 Bom.381). Explanation 1 therefore gives effect to the majority of hire purchase agrreements which have been judicially held to be contracts of sale.

3. Explanation No. 2 provides that notwithstanding anything contained to the contrary in the Indian Sale of Goods Act, 1930, the sale of goods which are acturally in the

Province....

Province of Bombay at the time when the contract for sale (as defined in that Act) is made in respect thereof, shall, wherever the said contract of sale is made, be deemed for the purpose of this Act to have taken pla-- in the Province of Bombay. This Explanation, particularly the opening words "Notwithstanding anything to the contrary in the Indian Sales of Goods Act, 1930" might suggest that an attempt has been made to lay down a provision which is not consistent with the provisions of the Indian Sale of Goods Act, 1930- This, however, is not a correct view to take. As pointed out above, the transfer of property is the gist of the definition of sale according to the Indian Sale of Goods Act. A mere contract does not comp ete a sale. Propert in the goods must be transferred to the purchaser. It is therefore immaterial where a contract for sale takes place. There is no provision in the Sale of Goods Act which lays down the stus or place where the property is said to have passed in the course of a sale. The provisions relating to transfer of property are contained in Chapter III of the Act, sections 18 to 24. These provisions provide when or the time when the property can be said to pass. This is made clear in section 19(3) which provides that rules contained in sections 20 to 24 are rules for asceftaining the intention of the parties as to the time at which the property or goods is to pass to the buyer. The second Explanation which relates to the situs or place of the transfer of property, does not therefore contravene any of sections 18 to 24 of the Indian Sale of Goods Act. Moreover, a taxing enactment must necessarily provide in definite and unambigeous terms in what cases and where a sale becomes taxable.

4. Moreover, the definition of sale cannot be read alone. It must be read with charging sections. It

first provides that dealers are responsible to pay the tax. Section 6 makes it clear that the tax is payable on the taxable turnover of a dealer. In all countries it is well established that a sale tax need not necessarily be on a particular sale, but can be on turnovers. The Domestic turnover Tax of 1920 in France which was a pioneer enactment in this matter is an instance in point. In the Central Province Petrol Tax case it was acceded before the Federal Court that a sales tax can be turnover tax. The result is that under the Bombay Sales Tax Act, a transaction is not taxable unless and until it enters into the turnover of the dealers If, therefore, a dealer has shown a transaction in this turnover, it will be absurd to contend that it has not taken place within the Province. Whatever may be the state of affairs in other Provinces, it is clear that the Bombay Sales Tax Act does not contravene any general rule of law realting to sale of goods.

Id/- J.R.D.
23/5/

Additional Secretary to Government.

U.R. to F.D.,No.8796, dated the 24th May 1949.

JPE.5/6/56.
4 copies.

No.15(7)-P/49

GOVERNMENT OF INDIA
MINISTRY OF FINANCE.

New Delhi, the 6th July 1949.

From

R.G.Mundkur, Esqr.,
Under Secretary to the Government of India

To

The Secretary to the Government of Orissa,
Finance Department,
CUTTAK.

Sir,

With reference to your letter No.5200-F, dated the 16th June, 1949, I am directed to enclose for the information of the Provincial Government a copy of the reference made to the Federal Advocate General about tmhe validity of the definition of "Sale" in certain Provincial Sales Tax Acts and a copy of his opinion thereon.

Yours faithfully,

Sd/- (R.G.MUNDKUR)

Under Secretary to the Government of India

No.15(7)-P/49

copy(with enclosure)with a copy of the letter replied to, forwarded to the Chief Secretaries of all Provincial Governments (except Orissa) in continuation of this Ministry letter No.15(7)-P/49, dated the 27th April 1949.

By Order, etc.,

Sd/- R.G.MUNDKUR.
Under Secretary to the Government of India

Finance Department.

As directed by S.O.(R.F.) these papers may be referred to the L.D. with reference to their opinion No.5795 dated 24-8-49.

U.R. to the L.D. dated 20-9-49.

JPE.5/8/56.
4 copies.

GOVERNMENT OF ORISSA?
Finance Department.

No.8200-F.

From
Shri N.M.Mahanti, B.A.,
Addl. Secretary to Government.

To
The Joint Secretary to the
Government of India,
Ministry of Finance,
New Delhi.

SUBJECT:- Overlapping in Central and Provincial taxation.

Cuttack, the 16th June, 1949.

Sir,

I am directed to invite a reference to para 2 of your letter No.15(7)-P/49, dated the 27th April, 1949, on the subject noted above and to request that, if no objection, a copy of the reference made to the Federal Advocate General about the validity of the definition of "sale" in the Provincial Sales Tax Acts and of his opinion may be funished to this Department, The Provincial Govts., have certain amendements in the Orissa Sales Tax Act under consideration. The opinion of the Federal Advocate General will be of material assistance to them to determine whether the amendments would be intra vires the general law regulating sales in the country or not.

Yours faithfully,

Sd/- N.M.Mahanti.

Addl. Secretary to Government.

JPE.5/6/56.
4 copies.

Statement of Case for the Opinion of the Advocate-General of India:-

Learned Counsel's opinion is invited on the question regarding the validity of the enlarged definition of "sale" as contained in clause 2 of the Bihar Sales Tax (Amendment) Bill, 1948, and other questions relating to the powers of the Provincial Legislatures to levy sales tax

2. The Bihar Sales Tax Act, 1947 (Bihar Act No.XIX of 1947), is an Act passed by the Bihar Legislature to provide for the levy of a tax on the sales of goods in Bihar. Section 2(g) of the Act defines the expression "sales". Section 4 of the Act deals with the incidence of taxation.

3. In June 1948 the Governor of Bihar promulgated an Ordinance known as the Bihar Sales Tax (Amendment) Ordinance, 1948, under section 88 of the Government of Inida Act, 1935, with a view to remove certain doubts regarding the interpretation of certain provisions relating to incidence of taxation in the original Act. The present Bill known as the Bihar Sales Tax (Amendment) Bill, 1948, as passed by the Bihar Legislature seeks to reenact the provisions of the Ordinance. As will be seen from the Statement of Objects and Reasons relating to the Bill, the most important changes proposed by the Bill are as regards (1) the definition of "sale" and (2) the rate of tax. It is pointed out that a large number of dealers have been taking advantage of certain loopholes in the existing law to evade payment of taxes to Government; consequently, the defintion of "sales" in the Act is proposed to be amended on the lines adopted recently in the United Province so as to make the sale of all goods produced or manufactured in the Province, whether such sale is effected in the Province or not liable to sales tax, unless

specially....

pecially exempted.

. The Governor of Bihar has reserved this Bill for the consideration of the Governor-General of India in accordance with the provisions of Section 76 of the Government of India Act, 1935, on the ground of repugnancy of the provisions of clause 2 of the Bill to certain provisions of the Indian Sale of goods Act, 1930. A doubt has been raised as regards the legality of the extended definition of "sale" as contained in the said clause and it is for this reason that the opinion is sought in the matter. Learned Counsels

5. The expression "sale" is defined by section 2(g) of the Bihar Sales Tax Act, 1947, as amended by clause 2 of the present Bill as follows:-

"sale" means, with all its grammatical variations and congnate expressions, any transfer of property in goods for cash or deferred payment of other valuable consideration, including a transfer of property in goods involved in the execution of the contract but does not includd a mortaggage, hypothecation, charge or pledge:

Provided that a transfer of goods on hire-puchase or other instalment system of payment shall, notwithstandin the fact that the seller retains a title to any goods as security for the payment of the price, be deemed to be a sale:

(1) which are actually in Bihar at the time when in respect thereof the contract of sale as defined in section 4 of that Act is made, or

(2) Which are produced or manufactured in Bihar by the producer or manufacturer thereof,

shall, where the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in Bihar:

Provided further that the sale of goods in respect of a forward contract whether goods under such contract are actually delivered or not, shall be deemed to have taken place on the date originally agreed upon for delivery.

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JPE.5/6/56.
4 copies.

The enlarged definition of "sale" is thus similar to definition of "sale" as contained in the United Provinces Sales Tax Act, 1948, It is stated that the Bill in respect of the U.P. Act was not reserved for the Governor-General's consent.

6. Taxes on the sale of goods are covered by entry No.48 of List II of the Seventh Schedule to the Government of India Act, 1935, and are therefore within the exclusive field of the Provincial Legislature. It will be noted that the tax is proposed to be levied by the Bihar Legislature even in respect of goods produced or manufactured in Bihar but sold outside the Province of Bihar, the goods being within or without the Province at the time of such sale. It can be said that the tax proposed to be levied is not in respect of the sale of goods but in respect of their production or manufacture. It can be argued that the sales of goods proposed to be covered by the extended definition of "sale" in so far as they relate to sales of goods where both the contract of sale and delivery of goods take place outside the Province of Bihar are beyond the powers of the Provincial Legislature. It can be further said that the enlarged definition of "sale" co verts the tax into an excise, which is covered by entry No.45 of List I of the Seventh Schedule to the Government of India Act, 1935, and is therfore within the exclusive field of the Dominion Legislature. This may amount to an encroachment on the revenues of the Dominion (Section 136 of the Government of India Act, 1935, distinguished between the revenues of the Dominion and revenues of a Province). In so far as the tax is proposed to be levied on goods produced or manufactured in the Province of Bihar but sold outside the

the.....

the Province, it can be said that the tax causes an encroachment on the revenues of the other Province. In this connection, attention is invited to the views expressed by the Ministry of Law and the Secretariat of the Governor-General on pages 5, 7 and 12/n.

7. Learned Counsel's opinions is, under the circumstances, invited on the following questions:-

(i) whether clause (ii) of the second provise to the definition of "sale" in section 2(g) of the Bihar Sales Tax Act, 1947, as amended by the Bihar Sales Tax (Amendment) Bill, 1948 is ultra vires the powers of the Provincial Legislature.

(ii) whether a Provincial Legislature is competent to levy sales tax when goods are manufactured in the Province but sold outside the Province,

(a) goods being within the Province of Manufacture at the time of sale; and

(b) goods being outside the Province of manufacture at the time of sale

and (iii) generally.

Sd/- R.S.Gae.
15/12/48.

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4 copies

No.AGF.(31)/48-4087/32.

Opinion.

1. My opnion is asked on the question whethe clause 2 of the second proviso to the definition of 'sale' in section 2(g) of the Bihar Sales Tax Act, 1947, as amended by the Bihar Sales Tax (Amendment) Bill, 1948, is ultra vires the powers of the B provincial legislature and on other connected questions.

2. The definition of 'sale' as it stoods before the present amendment was made, contained a proviso as follows:-

> "Provided further that notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in Bihar at the time when, in respect thereof, the contract of sale as defined in section 4 of that Act is made, shall, wherever the said contract of sale is made, be deemed for the purposes of this Act to have taken place in Bihar."

The result of the amendment now made is to introduce a further provision to theeffect that if the goods forming the subject matter of the sale are produced or manufactured in Bihar by the producer or manufacturerothereof the sale of such goods whereever the delivery or contract of sale is made shall be deemed for the purposes of the Act to have taken place in Bihar.

3. The vires of the new provision is doubted on two grounds viz., (1) that the enlarged definitionof 'sale' converts the tax into an excise and thus trenches on the revenues of the Centre (Dominion), and (2) that by taxing sales which take place in other provinces the Act trenches on the revenues of those provinces.

4. The question arises by reason of the fact that the Governor of Bihar has reserved this Bill for the consideration of the Governor-General of India in accordance with the provisions of section 76 of the Government of Indian Act, 1935, on the ground of repugnancy of the provisions of clause 2 of the Bill to certain provisions of the Indian Sale of Goods Act, 1930.

5. In my opinion, the duty sought to be levied as a result of this amendment is not a duty of excise in the cloak of a tax on sales. As was pointed out by thePrivy Councxil in (1945) F.C.R. 19, Governor-General in Council v. The Province of Madras, a duty of excise primarily is a duty levied on themanufacturer or producer in respect of the commodity manufacutred or produced. It is a tax on goods and not on sales or the produce of sales of goods. The tax is really a tax on sales even though the seller be himself the manufacturer or producer. The tax is levied on him qua seller and not qua manufacuber or producer.

6. The other ground on which the validity of the Act may be impugned is one which calls for more serious consideration. The entry in List II of the 7th Schedule under which this legislatie is made is entry 48: "tax on the sale of goods and on advertisements". The question is whether under this entry a provincial legislature is entixtled to levy a duty on sales which though not effected in the provice are deemed to have been so effected in certain circumstances. In Wallance Brothers v. The C.I.T.Bombay, 75 I.A.86, the prevision of the Indian Income Tax Act which provided that a company is resident in Birtish India in any year if its income arising in British India in that year exceeds its income arising without British India in that year was challenged on the ground that it was extra territorial and was for that reason beyond the competence of the Central Legislature under the Government of Indian Act, 1935 to enact. The P.C. in its judgment stated:-

> "There is no rule of law that the territorial limits of a subordinate legislature define the possible scope of its legislative enactments or mark the field open to its vision, X X X X X The resulting general conception as to the scope of income-tax is that, given a sufficient territorial connection between the person sought to be charged and the country seeking to tax him, icome tax may prpperly extend to that person in respect of his foreign income. In their Lordships view that general conception finds a place in the phrase 'taxes on income' as used in the Government of India Act, 1935.

The question is whether the same principles can be said to be applicable in the present case. In the Government of India Act as adapted an alteration has been made in section 99. The words "including laws having extra territorial operation" are inserted in

relation....

relation to the powers of the dominion legislature to make laws. But these words are absent in connection with the powers of provincial legislatures. Sub-section (2) of section 99 has naturally been omitted. The dominion legislature being now a completely soverign body has necessarily the power to enact extra territorial laws and this has been made clear by the insertion of the words above mentioned.

7. The question is as to the meaning of the words "taxes on sale of goods" in entry 48 read in conjunction with section 99 which says that a provincial legislature may make laws for the province or for any part thereof. Is it or is it not implicit in the entry itself that the power to tax is in respect of sales made or affected within the province? In answering this question it has to be borne in mind that every provincial legislature has been given this power of taxation. Of course, if the legislature of the province of Bihar is entitled to tax a particular sale the fact that the legislature of another province is also entitled to levy the tax on the same sale will not prevent both legislatures from legislating on the taxation measure. But the question is whether the right of a province to levy taxes on sales is not restricted to levying taxes on sales made within the province. When we take into consideration the other entries in list II which deal with various other kinds of taxes such as taxes on lands & buildings, hearth and windows: taxes on profession, trades etc: taxes on animals and boats: taxes on luxuries etc, the argument that in entry 48 a tax on the sale of goods must mean tax on sales effected within the province gains considerable support. No doubt the Bihar Act defines a 'dealer' as one who carries on the business of selling or supplying goods in Bihar and if the principle laid down in Wallace's Case is applicable there would be a sufficient nexus to justify the tax on sales

effected.....

effected outside the province, the nexus being (1) that the Sale is by a dealer, i.e. a seller, and (2) that such seller carries on business in the province. No question of nexus arises however if the power of taxation conferred by this entry is on sales effected within the province. In that event taxes on sales not made within the provinces would be beyond the competence of the provincial legislature. The question is not free from doubt. But on the whole I am of opinion that entry 48 properly construed must mean sales made within the province.

8. It may therfore well be doubted whether the new Bill which amends the definition of 'sale' by expanding it as set out in section 3 of the Bihar Sales Tax (Amendment) Bill is intra vires the provincial legislature. That however may not be a ground on which the Governor-General may refuse to given his assent to the Bill. I may mention that even in the original Bihar Sales Tax Act, 1947, the definition of 'sale' as explained by the second proviso to section 2(g) is open to the same objection because even if the goods be actually in Bihar it is possible that the sale of those goods may not be made in Bihar. Nevertheless assent was given to the Bill by the Governor General in the name of His Majesty . The present amendment only goes one step further in laying down that certain sales shall be deemed to have taken place in Bihar irrespective of the place of delivery or the place of making of the contract.

9. In one sense it may be said that all this dicussion is really academic because although in the definition clause it is provided that certain sales shall be deemed to have taken place in Bihar wherever the contracts of sale may have been made, the charging section namely section 4 only levies a tax on sales which have taken place in Bihar. In Wallaces Case referred to above the P.C. observed at page 97 that "the defintion of total income and residence of a company by themselves did nothing. Taken in isolation they raised no question or

vires. But the use of the defined terms in the charging section of the Act may result in ultra vires legislation. In my opinion, the position here is the same. The Act lays down which sales shall be deemed to have taken place in Bihar but when the legislature comes to enact the charging section it is limited to sales which have taken place in Bihar. In ILR-54 Bombay 216, the C.I.T. Bombay v. Bombay Trust Corporation Ltd. the P.C. said that when a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. It is clear therefore that a sale which is only deemed to have been made in Bihar is not a sale made in Bihar.

10. One other observation requires to be made before I answer the queries. Both the original and the present amended definition of 'sale' uses the words 'notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930." The Indian Sale of Goods Act defines 'sale' and "agreement to sell", but it does not deal with the question as to where a sale can be said to be effected. That question belongs to other branches of law.

11. The first query put to me is :

> whether clause (ii) of the second proviso to the definition of 'sale' in section 2(g) of the Bihar Sales Tax Act, 1947, as amended by the Bihar Sales Tax (Amendment) Bill, 1948, is ultra vires the powers of the Provincial Legislature.

Answer: The question is not free from doubt, but on the whole I am of opinion that the proviso in question is ultra vires the powers of the Provincial legislature This answer is subject to the observation I have made above that unless the charging section levies a duty on sales which are deemed to have taken place in Bihar no question of vires arises.

The second query put to me is:

Whether a Provincial legislature is competent

to levy sales tax when goods are manufacured in the Province but sold outside the Province,

(a) goods being within the Province of manufacture at the time of sale, and

(b) goods being outside the Province of manufacture at the time of sale.

ANSWER: The power to tax the sale of goods contained in the entry 48 of List II is , in my opinion, limited to the sale of goods effected within the province, if the sale is not made within the province, the fact that the goods are within the province or that they are produced or manufactured within the province will not in my opnion, give the Provincial legislature competence in such cases the sale shall be deemed to have been made in the province.

As regards the thrid query, viz. Generally, I have nothing to add.

Sd/- M.P.Engineer,

ADVOCATE-GENERAL OF INDIA.

New Delhi

28th December, 1948.

: L to levy the tax by resorting to the fiction that.

JPE.5/6/56.
4 copies.

LAW MINISTRY.

With reference to paragraph 9 of the Advocate-General's opinion, it seems to be obviously the intention of the Bihar Legislature that the rule of construction laid down in the second proviso to clause (g) of section 2 (as amended) should apply in respect of the charging provision contained in sub-section (1) of section 4 (as amended). Every sale of the nature described in the proviso is to be deemed for the purpose inter alia of section 6(1) of the Act to have taken place in Bihar. Would it be possible for an assessee to argue successfully that certain sales covered by the proviso have in fact, and according to the common law on the subject, taken place outside Bihar and, therfore, should not be taken into account in assessing the sales tax due from him notwithstanding the proviso? * these sales must be deemed to have taken place in Bihar for the purpose of section 4(1) , they cannot be excluded from assessment. I am inclined to think that the Provincial Government's agrguments will prevail, and shall be grateful if the Advocate-General will consider the matter further from this aspect.

+ to

Sd/- K. Sunderam
30/12/48

(K.V.K.Sundaram)
Secretary.

* would it not be possible for the Provincial Government to meet it with the counter-argument that even by virtue of the proviso

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4 copies.

No.AGI.- (31)/48-4027/32.

SUPPLEMENTARY NOTE.

1. I have considered the note of the secretary, Ministry of Law, dated the 30th December 1949. I have no doubt that the Bihar Legislature meant to tax not only sales which took place in Bihar, but also sales which according to the definition in thes Amending Bill were deemed to have taken place in Bihar. The question however is whether the legislature effectively carried out in Law what they wanted to do. The intention of the statute must be gathered from the statute itself. Being a taxing atatute it will be construed strictly against Government.

2. The argument suggested in the note of the Secretary that the sales become taxable because the definition says that for the purposes of the Act they shall be deemed to have taken place in Bihar is not without considerable force. I find that in other pieces of legislation the drafting of Acts has proceeded on the same lines. But I still cannot get rid of the doubt which I entertain on the subject, because the Privy Council judgment in Wallaces Case, as I read it, says that a definition section does not by itself enlarge the charging section unless the defined term is used in the charging section.

3. This aspect of the case is really not material for the consideration of the question whether assent should be given to the Bill by H.E. the Govern-General. The point may have to be considered further when it arises directly.

Sd/- N.P.Engineer
Advocate-General of India.

New Delhi,
6th January 1949.

JPZ.5/6/56.
4 copies.

FINANCE MINISTRY.

The Advocate General's view on the Bihar Sales Tax(Amendment) Bill, 1948, is that -

(a) As the charging section of the Act viz. Section 4 only levied a tax on sales which have taken place in Bihar, no question of Vires arise. The Bihar Legislature has failed to carry out in law what they wanted to do viz. tax sales which according to the definition in the amending bill were "deemed" to have taken place in Bihar, by not using in the charging section, the defined term in the definition section.

(b) The duty sough to be levied by Bihar cannot be considered as a duty of excise.

(c) If Bihar Legislature is entiled to tax a particular sale, fact that the Legislature ~~xxxxxxxxxxxxxxxxxx~~ of another Province is also entitled to levy the tax on the same sale will not prevent both Legislatures from legislation on the taxation measures.

(d) The power to tax the sale of goods contained in entry 48 of List II of the Government of India Act is limited to the sale of goods effected within the Province and if the sale is not made within the Province, the fact that the goods are within the Province or that they are produced or manufactured within the Province will not give the Provincial Legislature competence to levy the tax by resorting to the legal fiction that in such cases the sale shall be deemed to have been made in the Province.

2. The question now arises whether it is proper, merely on the ground of the legal doubts expressed in (a) and (d) above, to advise the Governor- General to refuse assent to the Bill. As pointed out by the Advocate General, even in the original Bihar Sales Tax Act, 1947, the definition of "sale" as expanded by the second proviso to Section 2(g) was open to the same doubt, but nevertheless assent was given to the Bill by the Governor-General in the name of His Majesty. The present amendment only goes one step

further. Further, similar provisions exist in other Sales Tax measures (as in U.P. and Madras) and these have not yet been challenged. If, therefore, the Bihar Government are prepared to take the risk of challenge in a court of law it may be argued that the Centre should not object to the Bill as passed by the Provincial Legislature.

3. On the other hand, as explained in my note of 6-12-48, the centre never liked the measures taken by Provincial Governments levying Sales tax on goods not sold for consumption inside the Province. For one thing, this hampers free movement of goods from one Province to another and arouses inter-provincial controversies. When Bihar levies an sales tax on all steel produced in that province, Assam wished to be the same for oil produced within her boundaries and Bombay may tax all cloth produced [illegible] in that Province. In the resulting process burden on the consumer increases allround. In the Finance Minister's Conference we tried to persuade the provincial Governments to agree to exempt all goods exported from one Province to another from being taxed by the Province of Origin, but without success. We did not press because we thought that the legal position of the provinces was unassailabele.

4. It has been stated that the fact that the legislature of the producing province imposes a tax on a commodity does not prevent the legislature of the consuming province to impose another sales tax to the extent up to which a consuming province can levy sales tax is in practice affected if the producing province also levies an sales tax on the same goods. The point raised in Mr. S.A.Lal's note of 4-12-48 that by taxing sales which take place in other provice the revenue of these provinces is entrenched upon, is thus substantially correct even if it is not legally valid.

5. In the circumstances, it is considered that the Bihar Bill offends substantially against the policy of correct public finance and this should not be assented to. It is also suggested that the legal opinion now given should be brought to the notice of all Provincial Governments including Bihar and they should be advised to modify their sales tax statutes suitably ten avoid future difficulties. If they do not accept the advice, we must await the advent of some public spirited citizen who will take the matter up to the Federal Court and secure and authoriatative decision.

Sd/- P.C.Bhattachary. 22/1/49.

JPE.5/6/56.4c.

H.M. may please see the statement of the case and the Advocate-General opinion. I agree with the view expressed in J.S.'s note above that this is a fit case for withholding Governor-General's assent. The power to fix a Sales Tax on goods sold outside the Province which Bihar Government want to assume is clearly opposed to sound public Finance and detrimental to the economic interest of the country. Now that this consideration has been reinforced by a Legal opinion questioning the competence of the Bihar Legislature to enact such a provision, it is only proper that the Governor General should be advised to withhold his assent.

Sd/- K.C.Ambegaokar.
24-1-49

The legal point involved is whether the charging section is governed by the defining section. The Advocate General thinks it is not. If he is right, the Act does not carry out the intention of the Legislature.

If it is held that Section 4 is governed by Section 2 or if the Legislature suitably modifies section 4, an important question of public policy will arise viz. whether a particular sale should be open to taxation in more Province than one. I agree with the Finance Ministry's views that it definitely is not.

On the point of law as well as of public policy it is desirable that the matter should be referred to the Bihar Goverhment for reconsideration and meanwhile H.E. the Governor-Generals assent should be withheld.

Sd/- J.Matthai.
26/1/49

JPE.5/6/56
4 copies.

H.I.No .16441 dated 10/10/49.

Submitted.

2. By the Sales Tax (Exemption to Amreli and Okhamandal District) Ordinance, 1949 (Baroda Ordinance No. VII of 1949) which came into force from 1-4-1949 and exempted the district of Amreli and Okhamandal from the operation of the Baroda Sales Tax Act, 1946, the liability to pay Baroda Sales Tax remained upto 31-3-1949.(Clause 3 of the Ordinance). To recover the arrears assessment upto this period underthe Baroda Act the Commissioner of Sales Tax Bombay Province has proposed that one Mr. R.M.Shah be appointed as Sales Tax Officer for these two districts. The F.D. considers that it will not be legally correct to appoint Mr. Shah under the Baroda Sales Tax Act for a period prior to 1-5-1949. The R.L.A. is requested to advise.

31-3-1949 as the govt. of Bombay assumed jurisdiction over the Baroda state only from

JPS.5/6/56.
4 copies.

Office of the R.L.A.

Appointment of Sales Tax Officers in Amreli and Okhamandal Districts.

Baroda Sales Tax Act, 1946.

The Sales Tax (Exemption to Amreli and Okha Mandal Districts) Ordinance, 1949, has by virtue of the provisions of sections 2 and 3 thereof saved the liabilities of the dealers to the payment of the sales tax under the Baroda Sales Tax Act, 1946 due before 1st April 1949. The Bombay Sales Tax (Application to the Distrcts of Amreli and OkhaMandal in the Baroda State) Order, 1949 has repealed the Ordinance but at the same time it has provided that the repeal shall not in any way affect the liabiltiy or obligation of any person to pay the amount of the tax due under the Baroda Sales Tax Act, before 1st April 1949 and the said amount shall be recoverable as if the Ordinance was not promulgated. In view of this position it would be possible to proceed under the Baroda Sales Tax Act for the recovery of the sales tax due from the dealers in Amreli and Okhamandal before the 1st April 1949 and make thenecessary appointments of Sales Tax Officers for that purpose.

Id/- P.M.L.
15/11

Remembrancer of Legal Affairs

U.R. to F.D. No. 13070 dated the 17th November 1949.